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**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, NORTHERN DIVISION**

XAT.COM LIMITED,

Plaintiff,

v.

HOSTING SERVICES, INC. A/K/A
100TB.COM,

Defendant.

**DEFENDANT'S REPLY IN SUPPORT
OF SHORT FORM MOTION TO
COMPEL INITIAL DISCLOSURES,
ANSWERS TO INTERROGATORIES
AND THE PRODUCTION OF
DOCUMENTS**

Expedited Treatment Requested

Case No. 1:16-cv-00092
Honorable Paul M. Warner

In its opposition to 100TB's Short Form Motion to Compel, Xat states for the first time that it "has provided 100TB with the information it will use to support its claim for damages." ECF No. 82 at 2. This is news to 100TB, as Xat did not organize or label any of the 13 documents in its September 21, 2018 production to correspond to 100TB's requests, *see* Fed. R. Civ. P. 34(b)(2)(E)(i), or describe what those documents were.¹ Further, contrary to Xat's assertion that its supplemental responses "provided additional details regarding its damages including rough estimates of the calculations," Xat's supplemental response to 100TB's Interrogatory 8 did not actually include any new information. *See* Exhibit J. In any event, if Xat's position is that it has produced all documents supporting its damage claim, then 100TB proposes that the need for a judicial determination on this aspect of 100TB's motion could be obviated if Xat were willing to enter into a stipulation, to be so ordered by the Court, that the documents from Xat's September 21, 2018 production are the only ones that Xat may rely on to prove its damages.²

Xat also argues that it need not comply with Rule 26(a)(1)(A)(iii) because it cannot provide the required computations without an expert. ECF No. 82 at 3. But its sole authority for that proposition—*Jake's Fireworks, Inc. v. Sky Thunder, LLC*, No. 16-CV-2475-JAR-GLR, 2017 WL 4037705, at *3 (D. Kan. Sept 13, 2017)—actually supports 100TB's position because the

¹ On September 28, 2018, a few hours after 100TB filed its motion, Xat designated four excel spreadsheets as responsive to 100TB's Request for Production 10 (seeking documents concerning Xat's claimed damages). These included three excel spreadsheets from its September 21 production and a fourth excel spreadsheet titled "xat sales ex vat.xlsx," which Xat produced on September 28 with no bates number.

² Xat's September 21, 2018 production consists of documents bates numbered XAT_0001709264 – XAT_0001709566.

Court *granted* the motion to compel, ordering the Plaintiff to provide a computation of its actual damages no later than 30 days from the date of the Court's order.

Last, there is nothing unclear about the deficiencies in Xat's responses to Interrogatories 5, 7, 15, and 16 and Requests for Production 8, 9, 13, and 14, which were explained in detail in 100TB's meet and confer letters. *See* ECF No. 81, Exhibits E-I. Although Xat claims that its recent supplemental responses contained "the responsive materials in its possession," *see* ECF No. 82 at 4, Xat's supplemental responses in fact contained very little new information and did not cure many of the deficiencies that plagued its original responses. *See* Exhibit J. This is particularly true given that Xat now claims the "database" it previously referred to in response to many of 100TB's requests is "entirely irrelevant" to this case. ECF No. 82 at 4.

DATED: October 9, 2018

BAKER & HOSTETLER LLP (NY)

By: /s/ David McMillan

*Attorneys for Defendant Hosting Services,
Inc., a/k/a 100TB.com*

CERTIFICATE SERVICE

I hereby certify that on the 9th day of October 2018, I caused a true and correct copy of the foregoing **REPLY IN SUPPORT OF SHORT FORM MOTION TO COMPEL INITIAL DISCLOSURES, ANSWERS TO INTERROGATORIES AND THE PRODUCTION OF DOCUMENTS** to be served by CM/ECF on the following:

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